

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
Southern Division

UNITED STATES OF AMERICA,

Criminal No. 15-20714

Hon. Matthew Leitman

Plaintiff,

v.

Offense: 18 U.S.C. § 922(g)

D-1 Chivez Dion Smith,

Defendant.

_____ /

United States' Sentencing Memorandum

The United States submits the following in support of its request for sentence of Defendant Chivez Smith.

I. Factual and Procedural History

On September 23, 2015, at approximately 5:00 in the evening Detroit Police officers assigned to the Major Violators Section were returning from the execution of search warrant in the east side of Detroit. As they travelled along Gratiot Ave. they approached a Sunoco Gas Station located at 12600 Gratiot. The officers, who were in two vehicles, observed a group of approximately 10 men congregating near one of the pumps at the gas station. Defendant Smith was a part of that group.

As officers pulled into the parking lot, Defendant Smith began to walk away. A member of the police officers' group then observed Smith lift up his shirt,

remove a handgun, and hand it to another individual who was later identified as Mr. Roderick Reynolds.

The officers later learned that Reynolds had a valid permit to carry a concealed weapon. Furthermore, Reynolds had a nylon pistol holster on the right side of his waistband at the time of his arrest. Officers recovered the firearm that Smith had handed to Reynolds from Reynold's left-hand pocket. The seized firearm was a .45-caliber Glock, and was loaded with fourteen rounds of ammunition.

On September 25, 2015 Roderick Reynolds was interviewed by members of the FBI Violent Crime Task Force regarding Mr. Smith having been in possession of Reynold's pistol. During that interview, Reynolds advised that he had known Smith for 15 years. Reynolds also told the officers that just prior to their encounter with the police, Smith had simply advised Reynolds to cover up that gun that Reynolds was in possession of. Reynolds also stated that he knew that Defendant Smith had a prior felony conviction and that he would not have given his gun to Smith because of that knowledge.

On November 5, 2015, a single-count Indictment was filed which charged the defendant Smith with Possession of a Firearm by a Previous Convicted Felon, in violation of 18 U.S.C. § 922(g). On April 5, 2016, Defendant Smith appeared,

with counsel, and pursuant to a Rule 11 Plea Agreement pleaded guilty to the Indictment. He is scheduled to be sentenced on November 22, 2016.

II. Sentencing Guideline Calculations and Relevant 3553(a) Factors

Congress has provided and pursuant to 18 U.S.C. §3553(a), relevant objectives and factors to be considered by sentencing courts in imposing a sentence sufficient, but not greater than necessary. Those objectives are: (1) the nature and circumstances of the offense, and the history and characteristics of the defendant; (2) the need for a sentence to reflect the basic aims of sentencing (including retribution, deterrence, incapacitation, and rehabilitation); (3) the kinds of sentences legally available; (4) the Sentencing Guidelines; (5) Sentencing Commission policy statements; (6) the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need for restitution.

A. The Advisory Guideline Range

In *United States v. Gall*, 552 U.S. 38, 41 (2007), the United States Supreme Court provided a template for sentencing proceedings in the district court. The Court held that a district court should begin sentencing proceedings by correctly calculating the applicable guidelines. *Id.* at page 47. The Court also held that while the district court should begin all sentencing proceedings by correctly calculating applicable Guidelines range, after doing so, both parties should be provided for an

opportunity to argue for whatever sentence they deem appropriate. Finally, the court should then consider all the statutory factors under §3553(a) to determine whether they support the sentence requested by either party prior to imposing sentence.

The Rule 11 Plea agreement between the government and Mr. Smith contemplated a sentencing guideline range of 46-57 months, resulting from the defendant's calculated Offense level 21, Criminal History level III. The United States Probation Department has calculated the same sentencing guidelines.

B. Title 18 U.S.S.G. §3553(a) - Imposition of a Sentence

Nature and Circumstances of the Offense and the History
and Characteristics of the Defendant 18 U.S.C. §3553(a)(1)

The nature and circumstances of the offense for which Mr. Smith has been convicted are detailed in Section I above and in the pre-sentence report prepared by the United States Probation Department. The offense in this case is a violation of federal law and the defendant apparently felt that he was free to ignore the law and outfit himself as he pleased on September 23, 2015. Mr. Smith cannot legally possess a firearm. His inability to do so is no mystery to him. Fortunately, his possession of the weapon was only that, possession. It was used to threaten anyone, it wasn't used to assist in another crime, it did not intentionally or unintentionally get fired and injured or kill anyone. The offense, however, does demonstrate a lack of respect for the law that Defendant Smith has demonstrated

for some time. It is that attitude and conduct that the government urges the court to bear in mind when considering the nature and characteristics of the defendant to decide the appropriate sentence.

The pre-sentence report reveals Mr. Smith was raised by a mother with strong concern for both the well-being of her family and the children to whom she was a foster mother. Mr. Smith was also able to maintain a relationship with his father. Defendant Smith's step-father, Mr. Wade, cares for Smith's adopted brother who suffers from cerebral palsy. Mr. Smith's step-father, as well, appears to have been a positive influence in Smith's life, who treated Smith's mom well and taught Smith "how to treat a woman". (PSR at ¶71). Smith's school-age years also appear to have been healthy and productive. Mr. Smith is engaged to his long-time girlfriend, has children with her and advises that he remains invested in and committed to that relationship. Defendant Smith has also enjoyed success as an entertainer and intends to continue in that field.

Given the success that family life that he had when he was young, the life is pursuing now and the potential he may possess – his criminal history and continued choice to ignore the law is disconcerting.

With respect to his criminal history, Mr. Smith has eleven (11) misdemeanor convictions, primarily traffic or operator license related between age 17 and 23.

He also has four (4) previous felony convictions committed in just over 5 years. (PSR ¶¶ 33-48).

In addition to the number, type and relative continuing nature of his criminal conduct as detailed in the presentence report, there are some additional aspects of his criminal history that the government asserts are relevant to the appropriate sentence.

In 2007, Smith was convicted of unarmed robbery in Oakland County. He was charged with felony for assaulting a man in Southfield to steal his glasses. Smith was sentenced under the Holmes Youthful Trainee Act and was positioned to recover from his multiple prior misdemeanor offenses and this offense without a felony criminal conviction on his record. On July 31, 2007 – Judge Chabot deleted a curfew from Defendant Smith’s probation to “pursue his artistic ambitions” as a rapper and musician. (Attachment 1 - Sentencing Transcript, Case No. 07-214613-FH, p. 4-5). As part of the defendant’s probation ordered Smith to not use marijuana and to not have weapons. Two prohibitions that he would demonstrate in the years to come that he was unwilling to abide by. On September 8, 2009, his HYTA status was revoked.

While he was on HYTA status in Oakland County, Defendant Smith was arrested for participating in the sale of a stolen car in May of 2009 in Detroit. He was again sentenced under the Youthful Trainee Act and failed a second time. He

was violated on January 22, 2010, approximately one month after an arrest for Possession with Intent to Deliver Marijuana, also in Wayne County.

Defendant Smith obtained five of his misdemeanor convictions between April of 2010 and May of 2012. Over \$1100.00 in fines and two days in jail did not convince him that he needed to change his ways.

In June 2006, Smith was again arrested for a 3rd Degree Fleeing and Eluding and related marijuana offenses. Mr. Smith appeared before the Hon. Martha Anderson in Oakland County Circuit Court on January 7, 2013. He faced a possible one-year sentence in the Oakland County Jail and prior to his guilty plea was the subject of motions to revoke his release status by the Oakland County Prosecutor's Office for his use of controlled substances while on bond. (Attachment 2 - Sentencing Transcript, Case No. 12-241757-FH, p. 3.).

Defendant Smith faced state guidelines of 7 to 34 months with an agreed to sentence of no more than one year in custody. During his sentence allocution, Mr. Smith assured Judge Anderson that he was ready to help himself, that he had stopped his marijuana addiction, was concerned as his record label was the most "promising thing in his life" and that a one-year sentence would hurt his music career. (Att. 2 at pgs. 10 and 11). The Court gave Mr. Smith the benefit of the doubt and reduced his agreed to sentence by 75%. He was sentenced to 90 days in jail and to two years of probation. His probation was discharged in February 2014.

In June and July of 2015, Mr. Smith was individually warned by DPD Gang Intel Officers, as part of Detroit's Ceasefire Program. Smith was found with marijuana and later, in a house with drugs and a firearm in it. He was advised that given his history, Smith represented a high risk to the community and would likely face federal charges if he chose to not change his ways.

Notwithstanding Smith's assurances to Judge Anderson in 2013 that he had finally changed his ways, and with the recognition of the importance of his career and family, and the warnings by the Detroit Police, Defendant Smith was then arrested in September of 2015 on this case.

C. Seriousness of the Offense, Promoting Respect for Law, and Providing Just Punishment 18 USC §3553(a)(2)(A)

The seriousness of this offense is societal. There are no overt acts of violence on Mr. Smith's part. However, his continued criminal conduct is serious. As well, the presence of a weapon always presents the potential for far more serious results if something untoward happens. Mr. Smith's continued violations speak clearly to his decision to ignore the law for the sake of whatever pleases him. A sentence that provides just punishment for Mr. Smith will hopefully convince him that his choice to engage in crime will not be tolerated as well as encourage others to a respect for the law over their own individual desire.

D. Deterrence: 18 USC §3553(a)(2)(B)

The second consideration of 3553(a)(2)(B) is the need to deter such conduct by others. The conduct engaged in by defendant Smith involved others, and a combined effort to allow him to possess a weapon, or worse, Smith took his friend's gun without permission. More importantly, previous fines, drug rehabilitation, probation and jail terms have not deterred Mr. Smith from criminal conduct. The sentence imposed by this court will hopefully serve as a deterrent to this defendant in the future, and to others who contemplate engaging in such conduct.

Sentencing in the federal system has long contemplated the ability to provide both specific and general deterrence. *United States v. Phinazee*, 515 F.3d 511 (6th Cir. 2008); citing *United States v. Turner*, 173 Fed. Appx. 402, (6th Cir. 2006). See also *United States v. Blackwell*, 459 F.3d 739, 774 (6th Cir. 2006), (affirming a defendant's sentence where the district court in its §3553 analysis stated that it doubted the defendant would ever engage in the conduct again, but that a primary sentencing factor was the need “to deter other similarly situated individuals from engaging in the conduct”).

E. Protecting the Public; 18 U.S.C. §3553(a)(2)(C)

As to protecting the public from further crimes of this defendant, the United States is hopeful that Mr. Smith will elect to never engage in criminal conduct

again. For any period of time that he is incarcerated, that is guaranteed. More importantly, his activities will be subject to monitoring while on supervised release, although his prior performance while on probation or parole suggests that he will have to make his own decision as to whether or not he will succeed this time. He will hopefully take advantage of any program assistance that is provided by the probation department.

If Mr. Smith's sentence occasions such positive results, society will be further protected and his family will benefit from a future that is crime free. If not, and he returns to the illegal activity, Mr. Smith will most certainly sacrifice his family and career. That choice, as it always has been, is his. In the meantime, a prison sentence to be followed by a period of supervised release will provide appropriate protection to the public.

III. Conclusion / Government Recommendation

The United States certainly recognizes the ability and responsibility of the Court to fashion a sentence within, or perhaps, outside of a particular sentencing guideline range. The United States respectfully requests that the Court consider all of the above in determining both the sentence for Mr. Smith, the guideline range of 46-57 months and a period of supervised release of at least 3 years.

Respectfully submitted,

BARBARA L. MCQUADE

United States Attorney

/s/ John N. O'Brien II

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Assistant United States Attorney

211 W. Fort Street, Suite 2001

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313-226-9715

November 15, 2016

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
Southern Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

D-1 Chivez Dion Smith,

Defendant.

Criminal No. 15-20714
Hon. Matthew Leitman

Offense: 18 U.S.C. § 922(g)

INDEX OF EXHIBITS

EXHIBIT 1 – Sentencing Before the Honorable Rae Lee Chabot, July 31, 2007.

EXHIBIT 2 – Sentencing before the Honorable Martha D. Anderson January 7, 2013.

STATE OF MICHIGAN

6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN

v

File No. 2007-214613-FH

CHIVEZ DION SMITH,

Defendant.

_____ /

SENTENCING

BEFORE THE HONORABLE RAE LEE CHABOT, CIRCUIT COURT JUDGE

Pontiac, Michigan - Tuesday, July 31, 2007

APPEARANCES:

For the People:

ASSISTANT PROSECUTOR
(No Appearance Given)
1200 N. Telegraph Road
Pontiac, MI 48341
(248) 858-0656

For the Defendant:

MARC G. BEGININ (P65576)
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Birmingham, MI 48009
(248) 593-1028

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WITNESSES: PEOPLE

PAGE

None

WITNESSES: DEFENDANT

None

OTHER MATERIAL IN TRANSCRIPT:

None

EXHIBITS:

INTRODUCED

ADMITTED

None

1 Pontiac, Michigan

2 Tuesday, July 31, 2007 - 3:26:40 p.m.

3 ASSISTANT PROSECUTOR: Your Honor, calling
4 number 48 on your docket from page 7, People v Smith, 07-
5 214613-FH.

6 MR. BEGININ: Good afternoon, your Honor,
7 Marc Beginin appearing on behalf of Mr. Smith, who's
8 approaching now. Date and time for sentencing. I have had
9 an opportunity to review the presentence investigation
10 report. Your Honor -- (undecipherable) -- one thing that
11 is factually correct, I believe only know that I would like
12 your Honor to take regarding this, and I don't have any way
13 to confirm it, I don't believe it would effect the
14 sentencing at all, is on page 3 of the evaluation. It says
15 in Eastpointe that the defendant was charged -- or
16 convicted of disorderly person and the defendant denies
17 that happened in Eastpointe.

18 THE COURT: He says it did not happen in
19 Eastpointe?

20 MR. BEGININ: No, it didn't happen at all.

21 THE COURT: It didn't happen at all.

22 MR. BEGININ: Yeah, it was a count three of a
23 three count -- it looks like misdemeanors, but it was
24 disorderly person, he said he never was convicted of that.

25 THE COURT: Okay.

1 MR. BEGININ: Aside from that, your Honor,
2 there are no additions, corrections or deletions to it.

3 THE COURT: The sentence complies with the
4 Cobbs plea.

5 MR. BEGININ: Yes, the sentence does comply
6 with the Cobbs plea, your Honor. The only thing that I
7 would ask of your Honor is the possibility of reducing the
8 probation oversight fees. The defendant really just
9 started working. He's 18, he's been working for about 30
10 days now. At this time he's on commission and making about
11 350 dollars every two weeks.

12 THE COURT: Okay, I'll reduce it to 10
13 dollars a month.

14 MR. BEGININ: Thank you, your Honor. And
15 regarding the curfew, your Honor, it looks like there's an
16 imposition of 11:00 p.m. to 6:00 a.m. curfew. The reason I
17 know the defendant, your Honor, is -- is through music.
18 I'm an entertainment attorney aside from a criminal defense
19 attorney, so he's also a musician/rapper, etcetera,
20 etcetera.

21 THE COURT: Okay.

22 MR. BEGININ: He -- he is going to get his
23 GED, he says by October of this year. I told him not to
24 stop doing that education thing.

25 THE COURT: Okay.

1 MR. BEGININ: But the 11:00 to 6:00 a.m.
2 thing, while he's admitted to using alcohol and using
3 marijuana, drug testing certainly seems appropriate for --
4 for this defendant. However, the curfew seems maybe impose
5 on -- on his ability to pursue his -- his artistic
6 ambitions, as well it might set an 18 year old up to fail
7 in a sense, your Honor, so I would ask your Honor to maybe
8 consider adjusting that or -- or limiting that in some
9 fashion.

10 THE COURT: Do the People want to respond to
11 that?

12 ASSISTANT PROSECUTOR: Your Honor, I think
13 it's a reasonable curfew from 11:00 to 6:00.

14 THE COURT: It normally is.

15 ASSISTANT PROSECUTOR: Considering the crime
16 charged I'll leave it to your discretion.

17 THE COURT: It is. I'm -- I'm going to
18 delete that requirement, but look out, if there's any
19 violations I'll give you free reign.

20 MR. BEGININ: Thank you, your Honor.

21 MR. SMITH: Yes, Ma'am.

22 THE COURT: Anything else? Anything else
23 from the People?

24 ASSISTANT PROSECUTOR: No, your Honor.

25 THE COURT: Mr. Smith, is there anything that

1 you have to say before being sentenced?

2 MR. SMITH: Nothing. Just thank -- thank you
3 for deleting that, I appreciate it, you're a very nice
4 woman.

5 THE COURT: Okay. It's the sentence of this
6 court that, is it Shy-vez?

7 MR. SMITH: Chivez (ph).

8 THE COURT: Chivez, Chivez Smith, for
9 robbery, unarmed, be sentenced to one (1) year of
10 probation, two (2) days jail credit, YTA status is granted.
11 Crime Victims fee is sixty dollars (\$60.00), supervision
12 fee is one hundred twenty dollars (\$120.00) at ten dollars
13 (\$10.00) a month, court costs are three hundred dollars
14 (\$300.00), state costs are sixty dollars (\$60.00).

15 You are to not use, purchase or possess any
16 alcoholic beverage or enter establishments that dispense
17 them, submit to drug and alcohol testing as directed, not
18 use any controlled substance without a prescription,
19 participate in outpatient or residential substance abuse
20 treatment, maintain and/or seek employment, provide income
21 withholding upon verification. No assaultive or
22 threatening behavior, not to use or possess any firearm or
23 other deadly weapon. Best of luck.

24 MR. BEGININ: Thank you, your Honor.

25 (At 3:30:30 p.m. hearing concluded)

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of seven (7) pages, before the 6th Judicial Circuit Court, Oakland County in the matter of:

PEOPLE OF THE STATE OF MICHIGAN

v

CHIVEZ DION SMITH

_____ /

Location: Circuit Court

Date: Tuesday, July 31, 2007

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

 |s| Sally Fritz
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: May 10, 2016

Theresa's Transcription Service, P.O. Box 21067
Lansing, Michigan 48909-1067 - 517-882-0060

STATE OF MICHIGAN

6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN

v

File No. 2012-241757-FH

CHIVEZ DION SMITH,

Defendant.

_____ /

SENTENCING

BEFORE THE HONORABLE MARTHA D. ANDERSON, CIRCUIT COURT JUDGE

Pontiac, Michigan - Monday, January 7, 2013

APPEARANCES:

For the People: SYDNEY D. TURNER (P46641)
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INTRODUCED

ADMITTED

None

1 Pontiac, Michigan

2 Monday, January 7, 2013 - 3:01:45 p.m.

3 THE CLERK: Your Honor, calling People v
4 Chivez Smith, case number 12-241757-FH.

5 MS. TURNER: Sydney Turner on behalf of the
6 State, your Honor. This is the date set for sentencing.

7 MR. JONES: Ready, your Honor. Gary Jones
8 appearing on behalf of Chivez Smith.

9 Your Honor, I've gone over the presentence
10 investigation report. The information contained in the
11 report is accurate. I would like to address the
12 recommendation. The recommendation is for 365 days of jail
13 by the probation department. This court indicated that you
14 would do -- you Cobbs'd it at county time, and did you
15 indicate a specific amount? His guidelines, so that the
16 court remembers, is 7 to 34. I believe those guidelines
17 are correctly scored.

18 In the Evaluation and Plan it did point out
19 that Mr. Chivez Smith does have some issues with respect to
20 drug dependency, and I believe those were highlighted by
21 the many motions that the prosecutor filed attempting to
22 revoke bond while Mr. Chivez Smith was out on bond. As
23 this court will recall, he had several positive tests for
24 opiates, as well as an initial test for marijuana when his
25 blood work came back on this case and the additional charge

1 was added.

2 In dealing with Mr. Smith I can tell this
3 court this is not the same person that stood before you
4 three or four months ago. In dealing with Mr. Smith I've
5 seen the -- the work that JAMS has done, even though I do
6 have a recent miss from 12/23 where he did not appear, and
7 there is some issue with respect to whether or not he got
8 the color, but he's indicated to me, Mr. Jones, I've never
9 admitted this to myself, let alone to my family, let alone
10 to my friends or my fans, because as the court will recall
11 he does do the rap music and he has been on radio and had
12 several shows and concerts, Mr. Chivez Smith admitted to
13 me, he said, Mr. Jones, I have a problem and I need help.

14 And Judge, you know, given the nature of the
15 offense, not minimizing it, it is a crime given his
16 criminal history, the court was on point with giving him
17 some type of jail time. We're asking for the court to give
18 him a lower amount than what's recommended by the probation
19 department and to give him some type of opportunity for
20 drug treatment. I see he's never had any type of drug
21 treatment in his history. He's got tremendous family
22 support, Judge. His mother, father, as well as -- I think
23 the producers from the record label are here, as well as
24 his fiancée is in the courtroom, your Honor. He does have
25 a record contract that is about to be, I guess going into

1 fruition. Hopefully, some day I'll see him on one of those
2 award shows.

3 But he knows that he needs to take control of
4 his own life, and the first thing he did, which I think was
5 very important, is he enrolled himself in the Phoenix --

6 What's the program?

7 MR. SMITH: Phoenix Treatment Center.

8 MR. JONES: He enrolled himself in the
9 Phoenix Treatment Center, realized that his life is
10 spiraling out of control. He doesn't want to be the next
11 Lindsay Lohan, your Honor. I say that to say, Judge, give
12 him an opportunity. He's just asking for mercy from the
13 court. He knows what he did was wrong.

14 THE COURT: Ms. Turner?

15 MS. TURNER: Your Honor, the People would ask
16 that the court adopt the recommendation. We think that it
17 is appropriate given the violations certainly that are
18 logged by Pretrial Services.

19 I would note that the last notice I have is
20 from December 23rd and I did provide counsel with a copy of
21 that where the defendant was a no show for a drug test and
22 a PBT.

23 And I would further note that the court did
24 address these issues briefly with defendant on December
25 21st, at which time my notes indicate that the court was

1 very clear that, you know, defendant must make sure that he
2 is present for all testing. And the People have -- have
3 nothing else to add.

4 THE COURT: All right. Well, the -- the
5 issues that I have are these: number one, he indicates --
6 and he indicated to the probation officer that interviewed
7 him, that he was in treatment at Phoenix Day Reporting
8 Center. However, when probation contacted for
9 verification, they were told that they couldn't find the
10 defendant in their system, that he wasn't enrolled.

11 MR. JONES: Judge, I can get you verification
12 if the court needs me to. I wasn't aware until I got the
13 probation report, but this is what he indicates to me and I
14 don't think that he would mislead the court and make a
15 material misrepresentation knowing that he could be
16 perjuring himself lying to the court. You know, he's
17 indicated he's getting treatment. He looks a lot different
18 to me, you know, than when he was -- you know, I think this
19 started off with him using asthma medication and then they
20 gave him, I believe, Promethazine for the -- whatever
21 inflammation he was having with his lungs. The
22 Promethazine, as this court is aware, contains codeine,
23 which is commonly an abused opiate and he's indicated that
24 he does have a problem with not only, you know,
25 Promethazine, but other substances. And he's come forward

1 and come clean, Judge. That's what we want every person to
2 do in them making a first step and changing their lives.

3 We know from his myriad of drug tests that
4 he's had, he has, in fact, tested positive. We know that
5 on at least several occasions there was some indication
6 that creatine was used to dilute his blood samples, and we
7 do see that from the reports that were handed to the court.
8 He's got a drug problem, Judge. I -- I believe, you know,
9 just in my heart of hearts that a person who has an
10 addiction, it's not an excuse or a substitute as to why
11 they committed a particular crime, but it should be viewed
12 differently. This person needs help, he needs to get
13 substance abuse treatment. I don't know that the one year
14 in jail necessarily addresses those needs. There are drug
15 programs that are available to this court.

16 And looking at his criminal history, it's not
17 such that, you know, there would be any, you know, problem
18 with the court giving him -- placing him in some type of
19 drug program. But I'll leave it to the court's discretion
20 and allow him to allocute.

21 MS. TURNER: Your Honor, the -- there is one
22 correction I would note and that's on page 1 of the
23 Evaluation and Plan.

24 THE COURT: Mm-hmm.

25 MS. TURNER: The very last paragraph there

1 where --

2 MR. JONES: Oh.

3 THE COURT: -- it says 7 to 28 months, that
4 should read 7 to 34.

5 MR. JONES: Seven to thirty-four, that's
6 correct, Judge. We did agree to that.

7 THE COURT: All right. Well, I have one
8 other little issue with the report here which is that when
9 he went for the interview, in addition to the verification
10 not being able to be made with respect to his being in a
11 treatment program, he tested positive for the
12 benzodiazepines and opiates, but it indicates, the last
13 sentence of the third -- yeah, the third paragraph says,
14 "Defendant stated he was not on any prescription medication
15 at the time of his presentence investigation." So, if he
16 wasn't on any prescription medication how could he have
17 tested positive for the benzodiazepine and opiates?

18 MR. JONES: If you'll recall, when we were
19 last in the court, the nature of the Promethazine is that
20 it comes in a liquid form. He's given a 90 day supply and
21 you use til the amount is used up. He indicated that he
22 hadn't acquired a new prescription but he still had
23 Promethazine left from the old prescription, and so
24 technically, he was still legally using but still abusing,
25 your Honor. The -- so that the court knows, what

1 Promethazine is usually -- what people usually do with it
2 is they mix it into a drink and drink what's called Lean,
3 and drink the --

4 THE COURT: They drink what's called what?

5 MR. JONES: They drink it and it's -- it's
6 called Lean --

7 THE COURT: Lean?

8 MR. JONES: -- your Honor, Lean, L-E-A-N.
9 Not LEIN as in Law Enforcement Information Network, but
10 Lean. And he's admitted that he has that issue, your
11 Honor. But all of that stemmed from him and --

12 THE COURT: Well, I don't see any admission
13 in this report --

14 MR. JONES: Well, the -- the -- I don't
15 know, you know, if you want to send it back for an updated
16 report, we could do that, but he's here to tell you, your
17 Honor, himself what the nature of his abuse has been. You
18 know that it exists because it's been documented by the
19 myriad of tests. I mean, if you're not abusing then how do
20 you explain the THC? There certainly wasn't a prescription
21 for THC when -- when it started out. He's got a drug
22 problem, your Honor. And given that, I -- I think he needs
23 drug treatment, and this court has the ability to help him,
24 and that's all he's asking for is the help of the court in
25 dealing with this problem.

1 THE COURT: Mr. Smith?

2 MR. SMITH: Your Honor, I don't know -- well,
3 obviously, they didn't put it in the report, but the lady
4 that I went to see at the probation office, we actually did
5 contact Mrs. Smith from the Phoenix Day Care Center, but
6 she couldn't -- she said she couldn't like enroll me in the
7 program because I wasn't recommended from a Judge or a
8 court. She said I can just come and kinda like just watch
9 around and learn a little bit, but that -- that's never
10 mind (ph).

11 I take fully responsibility of everything
12 that I've done. Like honestly, I came prepared to give a
13 bunch of excuses and I'm tired of excuses. I'm tired of
14 lying to my family, myself, my friends, my record label. I
15 honestly need help, your Honor, like I don't -- I don't --
16 I'm not a bad person at all. I know it's recommended as if
17 for me to do a year in jail, but I've never had nothing so
18 promising in my life, ever, and this is the first time I
19 have something to wake up and look forward to and do right.
20 And it might sound crazy, but honestly, I want to thank you
21 for giving me JAMS, because that stopped me from one
22 addiction, which was marijuana.

23 And I'm not gonna lie to you, yeah, I do have
24 prescriptions for Promethazine and codeine, but I abuse it.
25 I don't -- I don't use it as helping myself, and I'm -- I'm

1 tired of lying, your Honor. I -- like I said, I came in
2 with a bunch of excuses but that's not gonna help me. And
3 it's not gonna help my career. And like I said, I have
4 something very, very promising for me. Honestly, the --

5 MR. JONES: (Multiple speakers) -- CD, your
6 Honor.

7 MR. SMITH: -- that year in jail isn't gonna
8 do nothing, but I'm gonna help myself regardless. It's
9 nothing -- only I can help me, not my surroundings. But
10 I'm just saying a year in jail just kind of gonna push
11 everything that I worked so hard for, and by me being so
12 sober, not off of marijuana over the last month, the past
13 months we finding (ph) this case, I never thought so
14 clearer, and I -- you know, I just never felt so free. And
15 I don't feel like a liar anymore. I need help for myself.
16 You know, like I said, I'm lying to my family, my
17 girlfriend, my label. And it's not getting me nowhere. I
18 came here for you -- to give you excuses today, it's not
19 working. I need help, your Honor.

20 I have no excuse for why I didn't show up to
21 report in JAMS that day. It's no excuse. I -- I clearly
22 heard them call my color, it was just me -- so much going
23 on right now with -- with the label, with my fans. You
24 know, it's not your responsibility to know who I am, but
25 outside of this courtroom I am a very important person.

1 And it's just a lot of things going on. It just kinda all
2 caught me in a raf (ph) and I -- I didn't make it to go
3 report. I -- it did slip my mind, but I heard my color, I
4 have no excuse for that, and I'm just tired of lying to
5 myself. I need help today, like I just really need help.
6 I don't want to give no more excuses, I'm tired of it, it's
7 not helping me at all, your Honor. I take full
8 responsibility on everything that I've ever done.

9 Like I said, I -- like -- it might sound
10 crazy but I honestly do want to thank you for giving me
11 JAMS. Because without that I would have been under so much
12 pressure to not smoke marijuana and when I committed that
13 crime I was high on marijuana, and me not being high, I
14 would have never done that. It's crazy. It sounds crazy.
15 It's stuff you see on TV, and that's not me, I'm not that
16 person. I'm not the same person that stood in front of you
17 months ago, I'm a totally different person, your Honor.
18 And I'm tired of excuses so that's why I want your help.

19 I'm gonna help myself regardless mentally,
20 but I just need your help for my surroundings so I can --
21 it can work out a little better.

22 THE COURT: Well, Mr. Smith, you were here
23 when you decided to plead in this matter, you were here
24 when I indicated that I would sentence you to county time,
25 and actually, I said county time and probation and a

1 program. That's what my notes indicate, okay? That's why
2 I make notes, so I can remember. Don't always succeed, but
3 that's what I attempt to do. So, actually, this
4 recommendation, as far as the sentencing part of it, number
5 of days, is within the Cobbs agreement, okay?

6 MR. SMITH: Yes.

7 THE COURT: County time, number one. It
8 doesn't go along with the rest of what I asked for, which
9 was probation and a program.

10 MR. SMITH: Yes.

11 THE COURT: So, you know, I don't have a
12 problem with going along with my Cobbs but if you think
13 you're gonna walk out of here today without doing any jail
14 time, you got another thing coming, because that's not
15 gonna happen.

16 MR. SMITH: (Inaudible).

17 MR. JONES: Judge, he knows he's gonna go to
18 jail, the issue was -- the question is how much?

19 THE COURT: Mm-hmm.

20 MR. JONES: And the guidelines do allow for
21 this court to give him a lower amount than the year that's
22 --

23 THE COURT: Yes, I know.

24 MR. JONES: -- suggested, and I'm saying if
25 you combine that with a program, then he at least gets the

1 help, plus he gets the punishment. That's all I'm
2 indicating, your Honor. He needs punishment.

3 MR. SMITH: Yes.

4 MR. JONES: He also needs rehabilitation.

5 MR. SMITH: Honestly, I know that I'm not
6 gonna walk away -- that's not gonna help me. Even if you
7 let me go right now, that's still not gonna help me
8 personally with my own problem. I am aware of that. I
9 know it's not just gonna be a slap on the hand and see you
10 later, because that won't help me at all. I'm respectable
11 (ph) of that, your Honor.

12 THE COURT: All right, very well. Anything
13 else you wish to state before I impose sentence?

14 MR. SMITH: No, Ma'am.

15 THE COURT: Is there a license suspension
16 provision with respect to the charges of -- he's on
17 probation?

18 MR. JONES: I believe there is, your Honor.
19 For the operating under the influence of drugs, your Honor.

20 THE COURT: One year? I mean, how long is
21 it, six months or one year?

22 UNIDENTIFIED SPEAKER: Your Honor, it's gonna
23 be a one year suspension. He's got a prior substance abuse
24 conviction.

25 THE COURT: Thank you. All right then, it is

1 the sentence of this court with respect to the one count of
2 police officer, fleeing and eluding third degree, habitual
3 third, that you be placed on probation for two (2) years,
4 that you be sentenced to a hundred and eighty (180) days in
5 the Oakland County Jail with credit for eleven (11) days
6 served.

7 With respect to count two, controlled
8 substance, possession of marijuana, that you be placed on
9 probation for two (2) years, sentenced to a hundred and
10 eighty (180) days in the Oakland County Jail with credit
11 for eleven (11) days served.

12 With respect to count three, operating while
13 license suspended, second or subsequent offense, that you
14 be placed on probation for two (2) years, sentenced to a
15 hundred and eighty (180) days in the Oakland County Jail
16 with credit for eleven (11) days served.

17 With respect to count four, operating with
18 the presence of a controlled substance, you are placed on
19 probation for two (2) years, sentenced to ninety (90) days
20 in the Oakland County Jail with credit for eleven (11) days
21 served.

22 The balance of your jail sentence will be --
23 MR. SMITH: Sorry. I was walking over there.

24 THE COURT: Let me finish please. Thank you.

25 The balance of your jail sentence will be suspended after

1 ninety (90) days to enter a PA-511 residential treatment
2 program. You are to pay the Crime Victims Rights Fund a
3 hundred and thirty dollars (\$130.00), supervision costs of
4 two hundred and forty dollars (\$240.00), payable at ten
5 dollars (\$10.00) per month, court costs of six hundred
6 dollars (\$600.00), attorney fees to be determined and state
7 costs of two hundred and eighteen dollars (\$218.00).

8 You're to comply with DNA testing, you are
9 not to use, purchase or possess any alcoholic beverage or
10 enter establishments that dispense them. You are to submit
11 to alcohol testing as directed by your probation officer.
12 You shall submit to drug testing two times per month. You
13 are not to use any controlled substance without a
14 prescription. You're to participate in outpatient and/or
15 residential substance abuse treatment as directed by your
16 probation officer. You're to maintain and/or seek
17 employment as directed by your probation officer, and upon
18 verification of employment you're to enter into an income
19 withholding order.

20 You may not drive a motor vehicle while your
21 license is suspended and your license is suspended for one
22 (1) year, and you may not drive a motor vehicle without a
23 valid drivers license.

24 There's to be no assaultive or threatening
25 behavior and you are not to use or possess any firearm or

1 other deadly weapon, and there's to be no telephone
2 reporting.

3 MR. JONES: Thank you, your Honor. Your
4 Honor, just for the record, I'm handing Mr. Smith his
5 appellate rights form and, your Honor, can we approach on
6 an unrelated --

7 THE COURT: Yes, you may.

8 (At 3:22:37 p.m. hearing concluded)

9

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of eighteen (18) pages, before the 6th Judicial Circuit Court, Oakland County in the matter of:

PEOPLE OF THE STATE OF MICHIGAN

v

CHIVEZ DION SMITH

_____/

Location: Circuit Court

Date: Monday, January 7, 2013

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

 /s/ Sally Fritz
Sally Fritz, CER #7594
Certified Electronic Recorder

Dated: May 10, 2016

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